



Public Policy Observer

Responsible Sustainable Development Policy

The Public Policy Observer includes the analysis of draft legislation and regulations that are on the agenda of Government and Parliament, which are generally perceived as sensitive, as well as of certain publicly available information, with a view to identify potential risk to the public interest.

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The Stolen Assets Recovery Strategy: Quo Vadis?

Four events have marked the second decade of July, 2018. All refer, directly or indirectly, to a sensitive issue for each and everyone, namely the bank fraud, also known as the 'theft of the billion'.

The first event was Vladimir Plahotniuc's interview¹ that was an attempt to underscore, among other issues, the importance of communication with external partners about what has been happening lately in the Republic of Moldova.

Then the launch of an alleged investigation of the Russian Laundromat and the Theft of the Billion² followed, with the intention to plant certain perceptions about the events

associated with the bank frauds. By and large, they are described exactly in the manner sought by the protagonist of the first event.

The third event was a public joint press conference of the Office of the Prosecutor General, the Office of the Anticorruption Prosecutor and the National Anticorruption Center, at which the Strategy for the Recovery of the Funds Stolen from Banca de Economii, Banca Sociala and Unibank³ (hereinafter referred to as 'Strategy') was presented.

The fourth event was an interview by Ilan Shor, the key actor identified by Kroll Company in its investigation of the bank fraud, which was broadcast by a TV channel with nation-wide coverage and preceded by mass publicity prior to broadcasting.

All these events have aligned following a specific rationale and each had a specific goal:

- to shape a certain general perception of the bank frauds and the people who have been or might have been involved in them;
- to ensure some protection and absolution from public and political responsibility of certain people involved directly or indirectly in the bank frauds;
- to persuade external partners that the investigation of the bank frauds is in full swing and significant recovery efforts have already started;
- to distort certain findings of the Kroll Company with regard to the bank frauds;
- to give some advantages to certain

¹<http://tribuna.md/2018/06/11/interviu-vlad-plahotniuc-astazi-nu-exista-un-singur-pol-al-puterii-in-republica-moldova/>

²<http://zeppelin.md/rom/investigatii/miliardomat-moldovan-laundromat>

³<http://procuratura.md/file/Strategy%20Publica.pdf>

political groups and, hence, to disadvantage other political groups, in the context of a pre-electoral period.

In our view, the launching of the Strategy is the key event, for a number of reasons:

- it is conditioned by the IMF in the authorities' Memorandum on Economic and Financial Policies, as a prior action for the program review by the IMF Executive Board, whose meeting is scheduled for end-June, as well as is part of the authorities' dialog with the European Union, in the context of eventual disbursement of the first tranche of macro-financial assistance.
- it is a first attempt at initiating at least some communication with the public on this matter. Even if it is just an attempt, it is however an important step for subsequent domestic and external monitoring of the steps taken by relevant authorities (the Office of the Anticorruption Prosecutor and the National Anticorruption Center, in particular the Criminal Assets Recovery Agency);
- it allows one to track whether there is any connection between the authorities' views/understanding, on one hand, and other documents or actions, particularly in the field of justice, financial and bank fraud investigation, combating anti-money laundering and financing of terrorism, financing of political parties and other related activity, on the other hand.

The structure and key elements of the Strategy

By and large, the full title of the Strategy conflicts with the structure and contents of the document. Although the title suggests that the Strategy's goal is to **recover the funds stolen from three banks**, the text mostly covers the mechanics of bank frauds. The description of the frauds, their substance, actors and impact, including financial impact, should be part of other official investigations/documents.

It is worth noting that strategies as official documents are predominantly political documents and are developed by policy-making institutions. Therefore, the

document published by the prosecutors cannot be treated as a strategy in the traditional sense, as defined by Moldovan law.⁴

The Strategy does not clarify the frauds. Moreover, with the **extension of the target period** and the **inclusion of other types of bank frauds**, the goal of investigating the "theft of the billion" and subsequent recovery is diluted, the Strategy adds up to the lack of clarity about the fraud, but most importantly it increases uncertainty about the accountability of those involved and, respectively, about the eventual recovery of the assets.

The strategy abounds in contradictory statements, leaving the impression of a hasty compilation. For example, even if it is called "**recovery strategy**", which implies that the investigations have been completed, to a large extent, the authors state that "this document sets out the subsequent strategy of the institutions in charge, within their competencies", with a view to:

- **identify the beneficiaries** of the funds stolen from the three banks, including those who have supported and contributed to the fraud;
- **identify the route** of the stolen funds and determine their final destination;
- **take steps to recover the funds**, including by increasing the capacity of the relevant agencies to carry out such tasks;
- **recover the stolen funds** either by identifying them or, if impossible, by identifying other assets belonging to those who are guilty of the fraud, arresting them and eventually foreclosing/confiscating them."

Moreover, the authors of the Strategy point out that "**there is no accurate assessment of the exact amount of the bank fraud**". Hence, one may assume that the actual investigation is far from 90% reported by authors of the Strategy.

According to the Strategy, its goal is "**to recover, ... the funds in the amount equivalent to that of the state securities issued to secure the deposits of individuals**

⁴<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=319904>

and legal entities, ... including interbank placements of BEM, BS and UB, namely MDL 13.34 billion". The figure appears to be irrelevant in the context of the damages resulting from the political decisions taken on 7 November 2014, which have led to the subsequent acceleration of the theft of billions from the three banks. Eventually, the prosecutors treat this amount as unsecured damage, but the rationale behind recovery efforts should correlate with the rationale behind the fraud. The Strategy says that its purpose is to **collect the funds needed to cover the cost of the political decisions** that have led to emergency lending by the NBM, guaranteed by Government, which was later converted into state debt. However, the costs are much higher, including debt servicing interest (MDL 11 billion in 25 years).

Moreover, the Strategy seems to imply that the government's intention to convert guarantees into state debt was already there in November 2014. Thus, as noted in the Strategy "according to the **information notes** accompanying Government Decision 938-11 dated November 13, 2014 on Ensuring Macroeconomic Stability in the Context of Regional Conjuncture and Government Decision 124 dated March 30, 2015 on Ensuring the Stability of the Banking System in the Republic of Moldova, **Minutes 2** dated November 3, 2014 and **Minutes 3/2015** dated March 26, 2015 of the meetings of the National Committee for Financial Stability (NCFS), the purpose of granting state guarantees for emergency loans, **with their subsequent conversion into state securities**, was to cover the deposits of individuals and legal persons, **except for parties related to the banks and the placements of domestic banks in Banca de Economii (BEM), Banca Sociala (BS) and Unibank (UB)**. The NBM has thus extended non-performing loans to the three banks, although only one might have been classified as systemic at that time.

It should be noted that the final version of Government Decision 938-11 dated November 13, 2014, published after its de-classification, we no longer find the prohibition/exception to cover the deposits of other banks in BEM, BS and UB by state

guarantees. On the contrary, the Decision⁵ states that emergency lending would be used to repay, as needed, the deposits of domestic financial institutions. The verbatim of the Government meeting⁶ shows that between the meetings of the NCFS and of Government (which both took place on November 7, 2014, with a difference of several tens of minutes) amendments ("improvements") were made to the original text of the Government Decision. Therefore, a natural question comes to mind: who and why has added the words "financial institutions" in the list of beneficiaries of government-guaranteed lending extended by the NBM to the banks with placements in problem banks? Another obvious question is why the Strategy says nothing about investigating and recovering those funds.

Although the Strategy abounds with descriptions of the fraud at the expense of the description of planned recovery efforts, it seems that the **events preceding the theft at the three banks** have been overlooked on purpose. We refer to the **concerted actions by which control over the banks was taken** by changing the structure of shareholdings and shareholders. The strategy taken no note of the coordinated preparatory efforts that had paved the way for taking over the three banks and subsequently using them for implementing the "theft of the billion".

Unlike this Strategy, the report prepared by Kroll company offers full clarity on coordinated action in 2012-2013, which have made possible the bank fraud in the fall of 2014. Kroll's reports prepared in 2015⁷ and 2017⁸ show a clear picture of the events related to the **preparation and implementation of the bank fraud**. Moreover, Kroll's reports clearly identify the concerted action that culminated in stealing 12-13% of GDP. The reports cover the period between 2012 and 2014 and the findings are largely based on the information provided by the NBM.

⁵ paragraph 6 (1) of Government Decision 938 dated November 13, 2014

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=358103&lang=1>

⁶<https://www.zdg.md/stiri/stiri-politice/doc-stenograma-sedintei-in-care-s-a-decis-acordarea-a-95-mlrd-de-lei-bancilor-falimentare-candu-noi-avem-filtre>

⁷https://candu.md/files/doc/Kroll_Proiect%20Tenor_Candu_02.04.15.pdf

⁸<https://bnm.md/ro/content/bnm-publicat-o-sinteza-detalata-celui-de-al-doilea-raport-de-investigatie-al-companiilor>

It is worth noting that the Strategy developed by national authorities does not make any reference to the Stolen Assets Recovery Strategy prepared by the Kroll and Steptoe&Johnson Consortium in 2017 (according to the task book and agreement concluded with the NBM). According to the official press releases published in November 2017, "the officials representing Kroll and Steptoe&Johnson **have submitted an updated version of the Stolen Assets Recovery Strategy**, which takes into account earlier comments by the NBM, the Stolen Assets Recovery Agency and the Office of the Anti-Corruption Prosecutor."⁹

It should also be noted that a number of the findings in the Strategy developed by national authorities conflict with the information published by some state institutions. For example, the Strategy (June 2018) states that "at present, according to the findings related to investigated criminal cases, the total amount to be recovered pursuant to final judgments by courts is **MDL 1.39 billion**." On the other hand, in a press release published in September 2017, the NBM referred to final decisions of the courts of law and receivables amounting to **MDL 12 billion**, also mentioning that final court judgments were awaited for in connection to MDL 3 billion more¹⁰. Even though the amounts seem to differ – some are related to final judgments on criminal cases, and others – to judgments on civil cases – the amounts should be complementary, that is to be identifiable when compared to asset **recovery targets** set out in asset recovery strategies.

Conclusions and recommendations

- The Stolen Assets Recovery Strategy must be the outcome of joint work of all state entities, including the NBM, and aim at effectively recovering funds stolen from the banking sector by fraud. Recovery efforts must target not only the funds associated with criminal cases, but also those associated with civil cases, where the amounts to be recovered are

much higher and the beneficiaries are well-known.

- The Recovery Strategy should have been presented as a commitment of the state and not just of the prosecution bodies. The latter should have their own plans for tracking and recovering the stolen funds. Those plans should not necessarily be made public if there is a risk of jeopardizing recovery.
- The Recovery Strategy must aim at recovering all stolen funds. A Strategy cannot have the goal of recovering assets equivalent to the amount of the state guarantees issued and subsequently converted into government debt by Government. Covering only one hole in the NBM's budget due to the exceptional lending decisions taken in November 2014 and April 2015 cannot be the goal of a strategy for recovering the funds stolen from the three banks. Besides, the other banks' decision to place deposits in BEM after Government has secretly decided on guaranteeing the debt of the three banks requires a special investigation and calls for the subsequent recovery of funds extended by the NBM, and should be treated as part of the "theft of the billion".
- Any recovery strategy must rely on sound investigation, clear understanding not only of the financial consequences, but also of all stages of preparing the fraud. Otherwise, the recovery efforts based on the strategy would not yield any results, and might lead to legal disputes against the Republic of Moldova.
- Given international experience in recovering funds stolen in other countries, the national Stolen Assets Recovery Strategy should also correlated with the investigations and the strategies prepared by the foreign companies (Kroll and Steptoe&Johnson) contracted by the NBM.
- The fate of the recovery strategy prepared by Kroll and Steptoe&Johnson under the contract signed with the NBM is not clear. The national strategy in fact does not refer to relevant data in Kroll's reports or the strategy prepared by the Kroll and Steptoe&Johnson Consortium.

⁹<http://www.bnm.md/ro/content/raportul-de-investigatie-companiilor-kroll-si-steptoe-johnson-este-faza-finala-de-redactare>

¹⁰<http://www.bnm.md/ro/content/precizari-suplimentare-privitor-la-actiunile-civile-intentate-de-bancile-lichidare-si>

A number of communications by officials seem to infer that these two companies have submitted and discussed with the authorities their vision and strategy proposed for recovering the stolen funds.¹¹

- The extended period included in the Strategy (2007-2014), however, totally neglects a number of sensitive but important events, in the context of international investigations. Including those related to the Magnitsky case. However, both the Republic of Moldova and at least one of the three banks involved in the bank frauds in 2014 are at the core of the financial transfers made back in 2008. At the same time, the Magnitsky case is more and more often mentioned in connection with a number of bank fraud investigations in the region¹². The strategy does not make any reference to the "Moldovan Laundromat" either, while it is relevant, even if another bank than those three was involved in it.
- It is vital for national institutions to actively collaborate with the empowered institutions in relevant jurisdictions where the stolen funds are kept. However, by wasting time and failing to act swiftly reduce the chances of recovering the funds stolen from the banking system, including from the NBM.



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¹¹<http://www.bnm.md/ro/content/raportul-de-investigatie-companiilor-kroll-si-steptoe-johnson-este-faza-finala-de-redactare>;

<http://www.parlament.md/Actualitate/Comunicatedepresa/tabid/90/ContentId/3023/language/ro-RO/Default.aspx>

¹²<http://delna.lv/wp-content/uploads/2018/06/Delna-press-statement-on-ABLV-liquidation.pdf>